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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,547	01/25/2002	Eric Wolfgruber	02-121	3047

7590

04/11/2002

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EXAMINER

ZIMMERMAN, JOHN J

ART UNIT

PAPER NUMBER

1775

DATE MAILED: 04/11/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

MIF-4

Office Action Summary

Application No.

10/057,547

Applicant(s)

WOLFSGRUBER ET AL.

Examiner

John J. Zimmerman

Art Unit

1775

-- **Th MAILING DATE of this communication appears on th cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/647,547.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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OFFICE ACTION

1. The preliminary amendment filed with this application has been entered. Claims 11-16 are pending in this application.

Priority

2. Papers submitted under 35 U.S.C. 119(a)-(d) were filed in parent application Serial No. 09/647,547.

Information Disclosure Statement

3. No information disclosure statement has reached the file of this application as of the mailing date of this Office Action.

Drawings

4. There is no objection to the contents of the drawings.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Niebylski (U.S. Patent 3,834,881).

7. Niebylski discloses an article comprising a foamed metal body having embedded metal structural sheet elements sandwiching foamed metal slabs (e.g. see the figure). Although Niebylski may form the article by a different method than the molding method used by applicant, when there is a substantially similar product, as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

8. Claims 11-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Jarema (U.S. Patent 3,711,363).

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9. Jarema discloses an article comprising a foamed metal core having facing metal sheet elements and structural rivet through the structure (e.g. see Figure 4). Although Jarema may form the article by a different method than the molding method used by applicant, when there is a substantially similar product, as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

10. Claims 11-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Valdo (U.S. Patent 3,848,666).

11. Valdo discloses an article comprising a foamed metal body having embedded metal structural elements (e.g. tubes, blocks or plates) which act as reinforcements (e.g. see column 5, lines 8-41). In addition, although Valdo's finished panel may not require forms sandwiching the foamed panel, the intermediate form of the panel during manufacture is encased by metal mold plates (e.g. see column 3, lines 8-34) and this intermediate form before demolding anticipates the structural requirements of the claims. Although Valdo may form the article by a different method than the molding method used by applicant, when there is a substantially similar product, as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is

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patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

12. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Bjorksten (U.S. Patent 3,941,182).

13. Bjorksten discloses an article comprising a foamed metal body having embedded metal structural reinforcing elements which are coated with an adhesion promoting metal coating (e.g. see column 4, lines 34-55). Although Bjorksten may form the article by a different method than the molding method used by applicant, when there is a substantially similar product, as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

14. Claims 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Masuda (U.S. Patent 5,482,533).

15. Masuda discloses a curved steel vessel (e.g. Figure 1A) containing structural elements (rods) and which is filled with foamed metal (e.g. see Figure 1B). The intermediate article during manufacture while encased by the metal mold and containing the rods anticipates the structural

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requirements of the claims. Although Masuda may form the article by a different method than the molding method used by applicant, when there is a substantially similar product, as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324.

16. Claims 11-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Emmelmann (U.S. Patent 6,135,542).

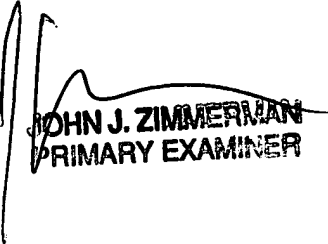
17. Emmelmann discloses an article comprising a foamed metal body having embedded metal structural elements and sandwiching metal forms (e.g. see Figures 2 and 7; column 3, line 60 - column 4, line 56).

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art serves to further establish the level of ordinary skill in the art at the time the invention was made.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Zimmerman whose telephone number is (703) 308-2512 and whose fax number is (703) 872-9310.


JOHN J. ZIMMERMAN
PRIMARY EXAMINER

jjz
April 5, 2002